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सं. 2]

नई दिल्ली, जनवरी 16—जनवरी 22, 2011, शनिवार/पौष 26—माघ 2, 1932

No. 2]

NEW DELHI, JANUARY 16—JANUARY 22, 2011, SATURDAY/PAUSA 26—MAGHA 2, 1932

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं

Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 11 जनवरी, 2011

आ.अ. 10.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43)

की धारा 106 के अनुसरण में, निर्वाचन आयोग, 2009 की निर्वाचन याचिका संख्या 8 में मद्रास उच्च न्यायालय के दिनांक 13-8-2010 के आदेश को एतद्वारा प्रकाशित करता है।

(निर्णय अंग्रेजी में छापा है।)

[सं. 82/पुडुचेरी-लोक सभा/(8/2009)/2010]

आदेश से,

आर. के. श्रीवास्तव, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 11th January, 2011

O. N. 10.—In pursuance of Section 106(a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Madras dated 13-8-2010 in Election Petition No. 8 of 2009.

(HERE PRINT THE JUDGEMENT ATTACHED)

In the High Court of Judicature at Madras

(Ordinary Original Civil Jurisdiction)

Friday, the 13th day of August, 2010

The Hon'ble Mr. Justice M. Jaichandran

Election Petition No. 8 of 2009

and

A. No. 1049, 1050 and 1051 of 2010

ELP. No. 8 of 2009

S. P. K. Dhamodhar

S/o Sundaram,

No. 13, Sathya Sastha Apartments,

1st Cross, Jhansi Nagar,

Mudaliarpet Post, Puducherry 605, 004.

...Petitioner

Vs

1. Narayanasamy
S/o. Velu,
No. 5, Ellaiamman Koil Street,
Puducherry-605 001
2. The Returning Officer-cum-District Collector—
Puducherry Parliamentary Constituency.
Collector's Office, Puducherry.

... .Respondents

This Election Petition praying that this Hon'ble Court be pleased (a) to declare that the election of the 1st respondent Mr. Narayanasami to the 13th Lok Sabha from Puducherry Parliamentary Constituency in which the result was declared on 16-5-2009 as null and void, (b) to direct the 1st respondent to pay the cost of the petition to the petitioner.

A. Nos. 1049 of 2010, 1050 of 2010 and 1051 of 2010

1. Narayanasamy
S/o. Velu,
No. 5, Ellaiamman Koil Street,
Puducherry-605 001
..... 1st Respondent/Applicant
Vs
1. S. P. K. Dhamodhar
S/o. Sundram,
No. 13, Sathyasastha Apartments,
1st Cross, Jhansi Nagar,
Mudaliarpet Post, Puducherry-605 004
Petitioner/1st Respondent in OA
2. The Returning Officer-cum-District Collector
Puducherry Parliamentary Constituency,
Collector's Office, Puducherry.
Respondents/
2nd Respondent in OA

This Application praying that this Hon'ble Court be pleased to take up the following issue as preliminary issue viz. (a) whether in the absence of clear pleading in the Election Petition of material facts and supported by material particulars that cognisance has been taken/charge had been framed against the applicant/respondent-1, in the criminal complaint on the file of the Judicial Magistrate, First Class, Raipur, and the same had been made known to the applicant/respondent-1 through service of Court summons on or before 20-4-2009 namely the date on which the applicant/respondent-1 filed the affidavit date 20-4-2009 along with his nomination, the Election petition is maintainable on the ground that the applicant/respondent-1 has suppressed the material information relating to complaint pending on the file of the Judicial Magistrate, First Class, Raipur, for want of triable issue and cause of action, (b) whether the Election Petition is maintainable when the Election Petitioner had not objected to acceptance of the nomination of this applicant at the time of scrutiny of nomination papers, after the nomination paper of the applicant had been properly accepted and the applicant has been duly declared elected.

A. No. 1050 of 2010

This Application praying that this Hon'ble Court be pleased to dismiss the Election Petition for non compliance of Section 81 (3) of the Representation of People Act

namely. (1) The copy of the Election Petition served on the applicant does not have the signature of the Election Petitioner by way of True Copy attestation by the Election Petitioner with his same signature as found is the verification of the Election Petition and the documents. (2) The corrections incorporated in the first and the fifth pages of the Election Petition have not been duly signed by the Election Petitioner attesting the corrections. (3) The Election Petitioner has not filed the requisite number of copies of Election Petition and documents as required under Section 81 (3) at the time of filing Election Petition. (4) All copies of documents served on the applicant contain attestation as true copy with verification dated 20-10-2009, even though Election Petition was filed on 30-6-2009. Obviously the documents are either not filed or not attested on 30-6-2009 and hence not to be treated as documents filed along with the Election Petition. Consequently Election Petition was not supported by any documents.

A. No. 1051 of 2010

This Application praying that this Hon'ble Court be pleased to strike out the following pleadings in the Election Petition No. 8/2009 as being vague, vexatious, without material facts and material particulars (1) The averment is Para-4 that “the 1st respondent has sworn to the above affidavit falsely stating that no criminal case is pending against him.” (2) The averment in Para-5 that “The returned candidate 1st respondent has suppressed material as well as substantial fact before the Returning Officer, Puducherry at the time of filling of nomination papers.” (3) The averment in Para-7 that “was fully aware of the criminal case registered against him at Raipur. However, willingly and dishonestly to the first respondent has suppressed the same in his affidavit filed before the second respondent.” (4) The averments in Para-7 that “the election to the Puducherry Parliamentary Constituency has been substantially affected the election and the election of the 1st respondent is void since 1st respondent had violated the mandatory provision of Section of 33A of the R. P. Act.” (5) Consequently reject the Election Petition, No. 8/2009 as being bereft of necessary pleadings for Trial to support the prayer sought for due to want of cause of action and triable issues.

This Election Petition along with these Applications coming on this day before this Honourable Court for hearing in the presence of Mr. S. Subramaniam Balaji, Advocate for the Petitioner in Election Petition No. 8 of 2009 and for the Applicant in Application No. 1049, 1050 and 1051 of 2010, and Mr. S. Subramaniam Balaji, Advocate for the petitioner in Election Petition No. 8 of 2009 and for the 1st respondent in Applicant in A. No. 1049 to 1051 of 2010 and G. Masilamani, Senior Counsel for Mr. Mani Sundargopal, Advocate for the 1st respondent in Election Petition No. 8 of 2009 and for the Applicant in A. No. 1049

to 1051 of 2010 and G. Rajagopalan, Senior Counsel for M/s. G. R. Associates, Advocate for the 2nd Respondent in Election Petition 8 of 2009 and for the 2nd Respondent in A. No. 1049 to 1051 of 2010 and upon reading the petition filed is Election Petition No. 8 of 2009 and the Judges Summon and Affidavit V. Narayanasamy filed in A. No. 1049 of 2010, Judges Summon and Affidavit of V. Narayanasamy filed in A. No. 1050 of 2010 and the Judges Summon and Affidavit of V. Narayanasamy filed in A. No. 1051 of 2010, and this Court is conscious of the fact that in a true democracy, the free will of the people would have to prevail, unless it is perceivably irregular or palpably illegal. The democratic process of elections cannot be permitted to be curbed or scuttled, except in accordance with the procedure established by law. While construing the laws relating to the elections. In their strict sense, as intended by the legislature, it is to be kept in mind that the rule is participation in the democratic process and exclusion should only be an exception. In such circumstances and this Court is of the considered view that sufficient cause and acceptable reasons have been shown by the first respondent for the rejection of the present election petition. As such, the election petition is liable to be dismissed, in limine, for want of proper pleadings and for lack of cause of action and triable issue.

It is ordered as follows :

1. That the Election Petition No. 8 of 2009 do stand dismissed.
2. That the connected Application Nos. 1049 of 2010, 1050 of 2010 and 1051 of 2010 do stand closed.
3. That there shall be no order as to costs in this Election Petition.

Witness the Hon'ble Thiru M. Yusuf Eqbal, the Chief Justice, High Court at Madras aforesaid, this the 13th day of August, 2010.

Sd/-

Assistant Registrar Original Side II

Certified to be True Copy

Dated this the 8th day of September, 2010

From 25th day of September, 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

MK-24-8-2010

ELP, No. 8 of 2009

in

A. Nos. 1049, 1050 and 1051 of 2010

Order

Dated 13-8-2010

The Hon'ble Mr. Justice

M. Jaichandran

for Approval 26-8-2010

Approved on 30-8-2010

Copy to :

The Returning Officer cum District Collector

Puducherry Parliamentary

Constituency,

Collector's Office,

Puducherry.

In the High Court of Judicature at Madras

Dated : 13-8-2010

Coram :

The Honourable Mr. Justice M. Jaichandran

Election Petition No. 8 of 2009

S.P.K. Dhamodhar . . . Petitioner

1. Narayanasamy

2. The Returning Officer-cum-District Collector

Puducherry Parliamentary Constituency

Collector's Office

Puducherry

. . . Respondents

Prayer : The election petition has been filed under Section 80-A and 81, read with Section 33-A of the Representation of the People Act, 1951, to declare that the election of the first respondent Mr. Narayanasamy, to the 13th Lok Sabha from Puducherry Parliamentary constituency, in which the result was declared, on 16-5-2009, as null and void, and to direct the first respondent to pay the costs of the petition to the petitioner.

For Petitioner : Mr. S. Subramaniam Balaji

For Respondents : Mr. G. Masilamani, Senior Counsel for Mr. Mani Sundragopal for R 1
Mr. G. Rajagopalan senior counsel for M/s. G. R. Associates for R 2

ORDER

Heard Mr. S. Subramaniam Balaji, the learned counsel appearing for the petitioner and Mr. G. Masilamani, the Senior Counsel for Mr. Mani Sundragopal, the learned counsel appearing for the first respondent, as well as Mr. G. Rajagopalan, the learned Senior Counsel for M/s. G.R. Associates appearing for the second respondent.

2. This election petition had been filed by the petitioner, who is said to be a registered voter at the Puducherry Parliamentary Constituency.

3. The petitioner had stated that he had functioned as the Chief Election Agent for Mr. Vishweswaran, a candidate nominated by the Bharatiya Janata Party, to contest as a candidate in the Parliamentary Elections, concluded in the year, 2009. The first respondent was the candidate nominated by the Indian National Congress party, to contest the said elections. At the said elections, the first respondent had been declared as the winning candidate, by the second respondent/Returning Officer, on 16-5-2009.

4. The petitioner had further stated that the first respondent, who is the returned candidate, had furnished an affidavit, along with his nomination form, as mandated under Section 33-A of the Representation of the People Act, 1951. From the information available about the candidates from the relevant website of the Election Commission of India, through the internet, it had been found that the first respondent had sworn to an affidavit, dated 20-4-2009, declaring that he was not accused of any offence, punishable with imprisonment for two years or more, in a pending case, in which a charge had been framed by the Court of competent jurisdiction.

5. It had also been stated that the first respondent had sworn to the affidavit, falsely, stating that no criminal case was pending against him. However, the petitioner had come to learn that a criminal case, vide criminal case No. 358 of 2009, had been registered in the Court of the Judicial Magistrate, First Class, Raipur, Chhattisgarh State, under Sections 499 and 500 of the Indian Penal Code, 1860. Thereafter, the petitioner had, immediately, informed the same to the second respondent/Returning Officer, even before the scrutiny of the nomination paper of the first respondent. However, the second respondent had accepted the nomination of the first respondent, without considering the objection raised by the petitioner.

6. The petitioner had also stated that the first respondent ought to have furnished the correct information before the second respondent/Returning Officer, as per the requirements of Section 33-A of the Representation of the People Act, 1951. By the said legislation, it is clear that the candidates should furnish true and real information, without suppressing the material and substantial facts before the Returning Officers concerned, at the time of the filing of the nomination paper.

7. The petitioner had further submitted that the first respondent was holding the position as the observer for Chhattisgarh State unit of the Indian National Congress party, during the run up to the parliamentary elections, held in the year, 2009. One Ajay Chandrakar, Former

Minister, Panchayat and Rural Development, State of Chhattisgarh, had instituted a complaint against the first respondent, under Sections 499 and 500 of the Indian Penal Code, 1860, before the Court of the Judicial Magistrate, First Class, Raipur, Chhattisgarh. On 6-4-2009, the Judicial Magistrate, First Class, Raipur, Chhattisgarh, had registered the complaint and had taken the same on file bearing criminal case No. 358 of 2009, and had ordered summons to the first respondent.

8. The petitioner had further stated that, on 6-4-2009, the said complainant had given a press conference, at Raipur, informing about the criminal case registered against the first respondent. A daily newspaper published from Raipur, Nagpur and Jabalpur, by the name “The Hitavada” had published the said news item and had also published the version of the first respondent, who had refused to give any comment, saying that he would submit his reply to the Court, whenever the need arose.

9. It had also been stated that, from the newspaper report, it could be seen that the first respondent had been at Raipur, on 6-4-2009, and that he was fully aware of the criminal case registered against him, at Raipur. However, the first respondent had suppressed the said fact, in his affidavit filed before the second respondent.

10. The petitioner had also submitted that the election to the Puducherry Parliamentary Constituency had been, substantially, affected by the fraudulent suppression of material facts, by the first respondent.

11. It had also been stated that the cause of action for the present election petition had arisen within the jurisdiction of this Court, on 17-4-2009, when the Election Commission of India had issued the notification for the Parliamentary Elections, on 27-4-2009, when the second respondent had published the list of contesting candidates, on 13-5-2009, when the election was held, and on 16-5-2009, when the result of the Puducherry Parliamentary Constituency was declared. The petitioner had also declared that the election petition had been filed within the period of 45 days, prescribed, under Section 81(1) of the Representation of the People Act, 1951. Therefore, the petitioner had filed the election petition praying that this Court may be pleased to declare the election of the first respondent, to the 13th Lok Sabha, from Puducherry Parliamentary Constituency, for which the result was declared, on 16-5-2009, as null and void and to direct the first respondent to pay the costs of the petition to the petitioner.

12. The first respondent in the election petition, who is the returned candidate, in Puducherry Parliamentary Election, held on 12-5-2009, had filed an application, in Application No. 1049 of 2010, raising certain preliminary objections, an application in Application No. 1051 of 2010, to dismiss the election petition for non-compliance of

Section 81 (3) of the Representation of the People Act, 1951 and an application in Application No. 1051 of 2010 to strike out the pleadings in the election petition, as being vague, vexatious, without material facts and material particulars.

13. The first respondent had submitted that, for the reasons stated in the affidavits filed in support of the applications, the election petition is not maintainable, especially, when the petitioner in the election petition had not objected to the acceptance of the nomination of the first respondent, at the time of the scrutiny of the nomination paper and after the nomination paper of the first respondent had been properly accepted and after he had been duly declared as elected in the election.

14. The first respondent in the election petition, who is the applicant in Application No. 1049 of 2010, had stated that the election petition filed by the petitioner to declare the election of the first respondent, held on 12-5-2009, as null and void, on the alleged ground that he had not disclosed the pendency of a complaint, made under Sections 499 and 500 of the Indian Penal Code, 1860, on the file of the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, is devoid of merits. The election petition had been filed under Sections 80-A and 81, read with Section 33-A of the Representation of the People Act, 1951.

15. It had been stated that the election petitioner had not stated, anywhere in the election petition, as to when and how he had informed the Returning Officer, the second respondent herein, about the non-disclosure of the relevant information by the first respondent. Further, the election petitioner had not shown any documentary proof before the second respondent-Returning Officer to impute knowledge of the alleged incident, said to have taken place before the date of the filing of the affidavit, dated 20-4-2009. Further, there is nothing to show that the first respondent had wilfully suppressed such information.

16. It had been further stated that no evidence is placed before this Court, along with the election petition, to prove the allegations of the petitioner, except a copy of the newspaper, which is said to have carried the news of the registering of the criminal case against the first respondent.

17. It had also been stated that the petitioner had only made vague and vexatious allegations in the election petition stating that he had informed the Returning Officer about the serious default, said to have been committed by the first respondent, even before the acceptance of the nomination paper. There is no proof shown to sustain such a claim. As such, the election petitioner had failed to furnish material facts and material particulars to support and sustain his allegations. There is nothing on record to show that the first respondent had suppressed the material

information known to him, authentically, which he was lawfully required to disclose in the affidavit filed along with the nomination paper. The vague allegations made by the election petitioner against the first respondent is an abuse of process of Court and therefore, the election petition is liable to be dismissed in limine, for want of proper pleadings and due to the lack of cause of action and triable issues.

18. It had also been stated that the alleged non-disclosure of relevant information by the first respondent is not a ground to challenge the election of the first respondent and for declaring the same as void, under Section 100 of the Representation of the People Act, 1951. In fact, the election petition is not filed under Section 100 of the Representation of the People Act, 1951. As such, the election petition is liable to be rejected, summarily.

19. It had also been stated that the election, and the rights and duties arising from such election, are created by the relevant statutes and such rights and duties are of paramount importance and therefore, the protection of such rights and the enforcement of the duties arising out of the statutory obligations cannot be tampered with or abridged in a flimsy manner. It is obvious on the face of the records available before this Court that the election petitioner had not shown sufficient proof to substantiate his claims against the first respondent to declare his election, as null and void. There is nothing on record to show that a criminal case has been registered against the first respondent and that the concerned Court, having jurisdiction to try the same, had taken cognisance of the matter and that a charge had been framed and the necessary summons had been served on the first respondent, before the date of the filing of the affidavit before the second respondent/Returning Officer.

20. It had also been stated that the election petition is liable to be dismissed due to the various incurable procedural defects, which are as follows :

(a) The non-disclosure, in clear terms, the date on which the Court had taken cognisance of the complaint said to have been made against the first respondent, and that certain charges had been framed, based on the said complaint, and that the necessary summons had been served on the first respondent, through Court, before he had filed the affidavit before the second respondent along with the nomination paper.

(b) The non-disclosure of certain particulars, including the date, time, place, the manner and the method by which the election petitioner had informed the Returning Officer about the alleged criminal complaint and as to whether the election petitioner had, in fact, objected to the acceptance of the nomination paper of the first respondent, at the time of its scrutiny.

(c) The non-disclosure of the material facts and the material particulars and the non-production of a copy of the acknowledgement of the information furnished by the election petitioner to the second respondent/Returning Officer.

(d) The non-disclosure and the non-production of material facts and particulars to prove that the election petitioner, had, in fact objected to the acceptance of the nomination paper, by the second respondent.

(e) The non-disclosure and the non-production of material facts and the necessary documentary proof required for imputing knowledge, regarding the pendency of the criminal case, on the first respondent, would render the election petition void, for lack of cause of action and triable issues.

21. It had also been stated that the election petitioner cannot be permitted to raise the issue regarding the pendency of the criminal complaint, merely based on a certain newspaper report. It cannot be said that the first respondent had knowledge, regarding the pendency of the alleged criminal case, before the date of the filing of the affidavit before the second respondent. Based only on a statement, said to have been made in the “The Nitavada” newspaper published at Raipur, stating that the first respondent would submit his reply to the Court, whenever, the need arose, it cannot be held that the first respondent had knowledge of the criminal case, said to be pending on the file of the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh.

22. It had been further stated that, even assuming, without admitting, that the newspaper report is true and correct, the election petitioner ought to have shown, by sufficient proof, that summons had been served on the first respondent, regarding the criminal case said to be pending on the file of the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, obviously, it would be improper on the part of the first respondent to file his sworn affidavit, merely based on a certain newspaper report, unless such information is communicated to him, officially, in the manner known to law. Even otherwise, the requirement of furnishing of information by the candidate, under Section 33-A of the Representation of the People Act, 1951, would arise only if the candidate is accused of an offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction. The offence contemplated, under Sections 499 and 500 of the Indian Penal Code, 1860, does not fall under the category of an offence regarding which the information had to be furnished by the candidate to the Returning Officer. The punishment prescribed for the offence of defamation is simple imprisonment for a term which may extend to two years or with fine or both. Only in cases, where the offence is punishable with imprisonment for two years or more,

the candidate would be required to furnish the information regarding the pendency of the criminal case. Therefore, there was no obligation on the part of the first respondent to disclose the information relating to the alleged pendency of a criminal case before the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh. Further, the object of the election petition, filed by the election petitioner, is mala fide in nature, as it has been done only with the intention of maligning the fair name of the first respondent in the eyes of the public and to gain cheap media publicity and undue mileage.

23. It had also been stated that, under Section 81 (3) of the Representation of the People Act, 1951, every election petition should be accompanied by as many true copies thereof, as there are respondents. Further, every copy should have been attested by the petitioner, under his own signature, to be a true copy of the petition. In fact, a copy of the election petition served on the first respondent does not have the signature of the election petitioner, attesting the petition to be a true copy. The corrections incorporated in the petition have not been attested by affixing his signature.

24. It had also been stated that the election petitioner had not filed the requisite number of copies of the election petition and the relevant documents, as required under Section 81(3) of the Representation of the People Act, 1951, at the time of the filing of the election petition. All copies of the documents served on the first respondent contain the attestation that they are true copies with the verification date mentioned as 20-10-2009, even though the election petition had been filed, on 30-6-2009. The said discrepancy is a serious flaw in the filing procedure. Section 86 of the Representation of the People Act, 1951, stipulates that an election petition, which does not comply with the provisions of Section 81 of the Act, is liable to be dismissed. As such, the election petition is liable to be dismissed, due to the incurable defects found to have been committed during the process of the filing of the said petition. Further, the Returning Officer, impleading as the second respondent, is neither a necessary, nor a proper party to the election petition and therefore, the election petition is bad for misjoinder of the second respondent in the election petition.

25. Further, the first respondent had prayed for striking out the following pleadings in the election petition :—

1. The averment in para-4 that “the first respondent has sworn to the above affidavit falsely stating that no criminal case is pending against him.
2. The averment in para-5 that “The returned candidate/1st respondent has suppressed material as well as substantial fact before the returning officer, Puducherry at the time of filing of nomination papers.

3. The averment in para-7 that “was fully aware of the criminal case registered against him at Raipur. However willingly and dishonestly to the first respondent has suppressed the same in his affidavit filed before the second respondent.”
4. The averments in para-7 that “the election to the Puducherry Parliamentary Constituency has been substantially affected the election and the election of the first respondent is void since the first respondent had violated the mandatory provision of Section of 33-A of the Representation of the People Act, 1951.”

26. It had also been prayed that, after the striking out of certain portions of the pleadings, the election petition may be dismissed, as being vague, vexatious and without the necessary cause of action and trible issues.

27. Further, by an affidavit, dated 10-7-2010, filed by the first respondent, it has been stated that the petitioner has filed a criminal complaint, dated 15-4-2010, on the file of the Chief Judicial Magistrate, Puducherry, under Section 200 of the Criminal Procedure Code, 1973, read with Section 125-A of the Representation of the People Act, 1951, and under Section 177 of the Indian Penal Code, 1860, on the alleged ground that the first respondent had failed to disclose the pendency of the criminal complaint against him, in the affidavit filed along with his nomination paper, on 20-4-2009, as required under Section 33-A of the Representation of the People Act, 1951. The criminal complaint had been filed, on 15-4-2010, after more than 360 days after the filing of the affidavit, by the first respondent, before the second respondent/Returning Officer, on 26-6-2009. The complaint filed by the election petitioner had been dismissed by the Chief Judicial Magistrate, Puducherry, as not maintainable, after a detailed hearing and by a well reasoned order. However, the election petitioner had not brought to the notice of this Court the complaint, made by him, in 15-4-2010, and the order of the Chief Judicial Magistrate, Puducherry, dated 5-5-2010, at the time of the hearing of the election petition by this Court, either on 21-6-2010, or on 29-6-2010.

28. It had also been stated that a certified copy of the order passed by the Chief Judicial Magistrate, Puducherry, on 5-5-2010, had been filed before this Court by way of a memo.

29. In the common counter affidavit filed by the election petitioner, in the applications filed by the first respondent, in Application Nos. 1049, 1050 and 1051 of 2010, the averments and allegations made by the first respondent had been denied.

30. It has been stated that the first respondent had knowledge of the criminal complaint that was pending against him on the file of the Judicial Magistrate, First

Class, Raipur, State of Chhattisgarh, under Sections 499 and 500 of the Indian Penal Code, 1860. It is clearly seen from the news item, reported in “The Hitavada” newspaper, dated 7-4-2009, that the first respondent had clear knowledge about the criminal complaint pending against him. The election petitioner had objected to the filing of the nomination paper by the first respondent, by suppressing the material fact regarding the pendency of the criminal complaint against him. The very fact that the first respondent had filed a false affidavit before the second respondent, which has been filed as a document, along with the election petition, would prove that the first respondent had, wantonly suppressed the material fact regarding the pendency of the criminal complaint against him. A copy of the English newspaper, “The Hitavada”, which is leading newspaper in the State of Chhattisgarh, had been filed as a document, along with the election petition. The Election Commission of India, had made it mandatory for the contesting candidates, to submit the relevant information about the criminal cases pending against them. Even though the first respondent had knowledge of the criminal complaint registered against him, and after he had been questioned about the same by the reporters, and after it had been reported in “The Hitavada” newspaper, it would not be open to the first respondent to plead lack of knowledge regarding the pendency of the criminal complaint.

31. It had also been stated that the first respondent had not denied the newspaper report, nor had he issued a notice against the same. It is not in dispute that the first respondent was in-charge of Chhattisgarh State unit of the Indian National Congress Party. While so, had made certain statements against the complaint belonging to Bharatiya Janata Party, so as to tarnish his image. In such circumstances, the complainant had filed the criminal complaint against the first respondent, which had been taken on file, by the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, on 6-4-2009. As soon as the news of the criminal complaint had spread, the newspapers, wanting to get clarifications, with regard to the said incident, had interviewed by first respondent to obtain his version, which had been written in the “The Hitavada” newspaper, in 7-4-2009. Even though the election petitioner had filed the necessary complaint, along with the proof, to show that the first respondent had suppressed certain material facts at the time of the filing of the nomination, the second respondent had not given due consideration to the complaint made by the election petitioner. Since, the election petition has sufficient cause of action, as well as certain triable issues, it cannot be dismissed, in limine, as prayed for by the first respondent, in his applications.

32. It had also been stated that the non-disclosure of the pendency of the criminal complaint by the first respondent is a serious issue, as it is the duty of the first respondent to have brought it to the knowledge of the

second respondent/Returning Officer, as per the provisions of Section 33-A of the Representation of the People Act, 1951. In such a case, the claim of the first respondent that the election petition ought to be dismissed, in Limine, cannot be sustained. The want of acknowledgement of the complaint made by the election petitioner, to the second respondent/Returning Officer, cannot be a ground for the rejection of the election petition.

33. The election petition is not vague or vexatious, as alleged by the first respondent. Since, the averments made in the affidavit filed in support of the election petition are true and correct, the prayer of the first respondent, in Application No. 1051 of 2010, for striking out the averments made in the election petition, cannot be sustained, in view of the decision of the Supreme Court, in *D. Ramachandran vs. R. V. Janakiraman* [(1999) 3 SCC. 267]. Once it is found that the election petition has the necessary cause of action and triable issues, it cannot be rejected, in limine, without a proper trial. Since, the filing of the paper and the serving of the notice of the election petition and the relevant documents on the first respondent, cannot be ground for rejection of the election petition, in limine, as it has been done to the satisfaction of the Registry of the High Court. Therefore, the applications filed by the first respondent, in Application Nos. 1049, 1050 and 1051 of 2010, are devoid of merits and they are liable to be dismissed.

34. The main contention of Mr. S. Subramaniam Balaji, the learned counsel appearing for the petitioner in the election petition, is that the first respondent had sworn to his affidavit, on 20-4-2009, and has submitted it along with his nomination paper, to the second respondent/Returning Officer. In the said affidavit, he had declared that he is not accused of any offence punishable with imprisonment for two years or more in a pending case, in which charge had been framed by the Court of competent jurisdiction, even though a criminal case had been registered against him, in Criminal Case No. 385 of 2009, on the file of the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, under Sections 499 and 500 of the Indian Penal Code, 1860. As such, the first respondent had incurred a serious disqualification by failing to comply with the mandate of Section 38-A of the Representation of the People Act, 1951. In such circumstances, the election of the first respondent to the 13th Lok Sabha, from Puducherry Parliamentary Constituency, for which the result had been declared, on 16-5-2009, would be null and void.

35. The learned counsel appearing for the petitioner had also submitted that the first respondent was holding the position as an observer for Chhattisgarh State unit of the Indian National Congress party during the run up to the Parliamentary Elections of 2009. While so, Ajay Chandrakar, Former Minister, Panchayat and Rural Development, State of Chhattisgarh, had instituted a

complaint, under Sections 499 and 500 of the Indian Penal Code, 1860, before the Court of the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, against the first respondent. On 6-4-2009, the Judicial Magistrate, First Class, Raipur, had registered the complaint filed, in Criminal Case No. 385 of 2009, and had ordered summons to the first respondent. On 6-4-2009, the complainant had given a press conference at Raipur, informing about the criminal case registered against the first respondent. Such information had been published in the English daily “The Hitavada”, as a news item. The first respondent had also commented on it saying that he would be submitting his reply to the Court, whenever the need arose. As such, it is clear that the first respondent had known about the pendency of the criminal complaint against him, at the time of the filing of his affidavit before the second respondent, along with his nomination paper, on 20-4-2009. Thus, it is clear that the first respondent had wilfully and dishonestly suppressed certain material facts, which he should have mentioned in his own affidavit filed before the second respondent, on 20-4-2009, in accordance with the provisions of Section 33-A of the Representation of the People Act, 1951.

36. The learned counsel appearing for the petitioner had also stated that the mala fide and fraudulent act of the first respondent had substantially affected the election of the Puducherry Parliamentary Constituency, held in the year, 2009, and that the election of the first respondent to the 13th Lok Sabha, from Puducherry Parliamentary Constituency, declared on 16-5-2009, is null and void.

37. The learned counsel appearing for the petitioner appellants had relied on the following decisions in support of his contentions :

37.1. In *D. Ramachandran vs. R. V. Jankiraman* (1999) 3 SCC. 267), the Supreme Court had held as follows :

“8. We do not consider it necessary to refer in detail to any part of the reasoning in the judgment; instead, we proceed to consider the arguments advanced before us on the basis of the pleadings contained in the election petition. It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot prove into the facts on the basis of the controversy raised in the counter.

9. Under Order 6 Rule 16, the court is enabled to strike out a pleading (a) which may be

unnecessary, scandalous, frivolous or vexatious; or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or (c) which is otherwise an abuse of the process of the court. We have already pointed out that it is not the case of the first respondent that the pleading in the election petition is vitiated by all or any one of the aforesaid defects mentioned in the Rule. Hence striking out parts of the pleading in this case was not at all justified.

10. On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No. 36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebuted could void the election and the provisions of Order 7 Rule 11(a) CPC, cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11 (a) CPC the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See *Roop Lal Sathi v. Nachhattar Singh Gill* (1992) 3 SCC 487. We are satisfied that the election petition in this case could not have been rejected in limine without a trial."

37.2. In *Peoples Union for Civil Liberties (PUCL) Vs. Union of India* (AIR 2003 SC 2363), the Supreme Court had held that the voters right to know the antecedents of contesting candidates is a facet of Article 19(1) (a) and such disclosure is necessary for the survival of true democracy.

37.3. In *Union of India Vs. Association for Democratic Reforms* (AIR 2002 SC 2112), it has been held that the word 'election' in Article 324 of the Constitution of India includes the entire process of election, which consists of several stages. It embraces many steps, some of which have an important bearing on the process of choosing a candidate.

38. Per contra, Mr. G. Masilamani, the learned senior counsel appearing for Mr. Mani Sundargopal, the learned counsel appearing for the first respondent, had submitted that the only substantial ground raised by the petitioner in the election petition is that the first respondent had wilfully suppressed certain material facts by failing to disclose, in his affidavit filed along with the nomination paper before the second respondent/Returning Officer, the fact that a criminal complaint had been registered against him in the file of the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, under Sections 499 and 500 of the Indian Penal Code, 1860.

39. In learned counsel had further submitted that the petitioner had failed to show as to how the non-compliance of the provisions of Section 33-A of the Representation of the People Act, 1951, by the first respondent, could be a valid ground for setting aside the election of the first respondent as a member of the 13th Lok Sabha, representing Puducherry constituency, in the Parliamentary Elections held in the year, 2009.

40. The learned counsel had further submitted that the grounds, on which the election of a candidate can be declared to be void, had been, specifically, set out in Section 100 of the Representation of the People Act, 1951. While so, it is not open to the petitioner to state that the non-compliance of the provisions of Section 33-A of the Representation of the People Act, 1951, could also be a ground for setting aside the election of the first respondent.

41. It has been further stated that, according to Section 33-A(1)(i) of the Representation of the People Act, 1951, a candidate is expected to furnish information, if he is accused of any offence punishable with imprisonment for two years or more in a pending case, in which a charge has been framed by the court of competent jurisdiction. However, in the present case, the first respondent had no obligation, whatsoever, to furnish the information, with regard to a complaint, said to have been registered on the file of the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, in Criminal Case No. 385 of 2009, under Sections 499 and 500 of the Indian Penal Code, 1860, since, the alleged offence, even if it had been committed, would only entitle the Magistrate concerned to impose the punishment of simple imprisonment on the accused for a term which may extend to two years or with fine or with both, as per Section 500 of the Indian Penal Code, 1860. As such, there is no ground made out by the petitioner, even under Section 33-A of the Representation of the People Act, 1951, to set aside the election on the ground that the first respondent had failed to disclose certain material particulars, in his affidavit filed along with the nomination paper before the second respondent. Therefore, the election petition filed by the petitioner is misconceived and malicious in nature and it is liable to be dismissed by this Court, as devoid of merits, with exemplary costs.

42. The learned counsel had also submitted that an election petition calling in question any election may be presented, under Section 81 of the Representation of the People Act, 1951, on one or more of the grounds specified in sub-section 1 of Sections 100 and 101 of the Representation of the People Act, 1951.

43. The learned counsel appearing for the first respondent had placed before this Court the decision of the Supreme Court, in Union of India Vs. Association for Democratic Reforms (AIR 2002 SC 2112) to show that the constitutionality of the amendment made in the Representation of the People Act, 1951, introducing Section 33-A had been affirmed by the Supreme Court. However, he had also stated that Section 33-B introduced in the Act, by way of an amendment, had been quashed by the decision of the Supreme Court, reported in Peoples Union for Civil Liberties (PUCL) Vs. Union of India (AIR 2003 SC 2363).

44. The learned counsel appearing for the first respondent had laid stress on the fact that the petitioner in the election petition had not disclosed the material facts, as required under the law. Non disclosure of material fact is fatal to the maintainability of the election petition. He had also submitted that the provisions of the statutory law applicable to case would alone apply, for the institution of an election petition and not the general principles of common law. He had also pointed out that the main relevant provisions of the Representation of the People Act, 1951, which would be directly applicable to the facts of the case in hand, are Sections 33-A, 80, 81, 83, 86, 100, 101, 123 and 125-A of the Representation of the People Act, 1951.

45. The learned counsel had also submitted that the only charge made by the petitioner in the election petition is the alleged non-disclosure of certain information, as mandated under Section 33-A of the Representation of the People Act, 1951. However, the petitioner in the election petition had not shown as to how the first respondent can be imputed with the knowledge of the English newspaper “The Hitavada” that is said to have been published in the State of Chhattisgarh. No certified copies of the complaint, the documents relating to the registration of the case and the summons, said to have been issued to the first respondent by the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, had been filed before this Court, as Exhibits. The petitioner had not shown as to how it is obligatory on the part of the first respondent to disclose, in his affidavit, filed along with the nomination paper, certain news, that is said to have ppeared in the newspaper, “The Hitavada”, in the State of Chhattisgarh.

46. The learned counsel had also pointed out that Sections 200, 201, 202, 203, 204 and 205 of the Civil Procedure Code, 1908, do not contemplate registration of a private complaint. A lengthy procedure has been contemplated for the registration of a private complaint. Further, nowhere in the affidavit filed in support of the

election petition, the petitioner had stated that summons had been served on the First respondent before 20-4-2009, when he had submitted the affidavit, along with the nomination paper, before the second respondent/Returning Officer. Further, the affidavit filed by the petitioner does not state that a charge had been framed against the first respondent, based on which summons had been served on him.

47. It had also been stated that material facts had not been pleaded and the materials relating to the pleadings had not been produced before this Court. It had also been pointed out that Annexure No. 6 is not relevant to the election petition.

48. The learned counsel had also submitted that it had not been shown by the petitioner as to how the election for the Puducherry Parliamentary Constituency held in the year, 2009, had been substantially affected, as alleged in the election petition.

49. The learned counsel had also submitted that after striking off the averments made in the election petition, as prayed for in the application, in Application No. 1051 of 2010, no triable issue would be available in the election petition for this Court to consider during the trial. Since, no cause of action had been made out by the election petitioner, the election petition is liable to be rejected, summarily, at the threshold.

50. The learned counsel had also submitted that the words in phrase found in Section 33-A(1)(i) of the Representation of the People Act, 1951, “for two years or more” should be read together. Section 33-A of the Representation of the People Act, 1951, reads as follows :

“33-A. Right to information—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether.

- (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction ;
- (ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.
- (2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered."

51. It has also been submitted that the phrase "upto two years" found in Section 500 of the Indian Penal Code, 1860, does not fall under the ambit of the provisions of Section 33-A of the Representation of the People Act, 1951.

52. The learned counsel had also submitted that Section 33-A of the Representation of the People Act, 1951, cannot be a ground for setting aside the election of the first respondent for the reason that the grounds for an election to be declared as void are specified in Sections 100 and 101 of the Representation of the People Act, 1951, as per Section 81 of the said Act. Since, no ground had been made out in the present case, in accordance with Section 100 of the Representation of the People Act, 1951, the election petition filed by the petitioner is contrary to Section 81 of the said Act. In fact, the election petition filed by the petitioner does not even mention Section 100 of the said Act. Even assuming, without admitting, that there was a wilful suppression of a material fact, which was required to be disclosed by the contesting candidate, under Section 33-A of the Representation of the People Act, 1951, it cannot be a ground under Section 100 of the Representation of the People Act, 1951. In fact, Section 125-A of the Representation of the People Act, 1951, provides the penalty for the failure of a candidate to furnish information relating to sub-section 1 of Section 33-A of the Act, as imprisonment for a term, which may extend to six months, or with fine, or with both. Based on the said Section, the petitioner in the election petition had filed the criminal complaint, dated 15-4-2010, on the file of the Chief Judicial Magistrate, Puducherry, under Section 200 of the Criminal Procedure Code, 1973, read with Section 125-A of the Representation of the People Act, 1951, and under Section 177 of the Indian Penal Code, 1860. The criminal complaint, which had been filed, belatedly, has been dismissed as not maintainable, on 5-5-2010. The said fact had not been placed before this Court, by the petitioner, when the election petition came up for hearing, on 21-6-2010 and on 29-6-2010.

53. The learned counsel had also submitted that the election petition, is not maintainable, also for the reason that the procedural formalities had not been complied with in the filing of the said petition, like the supplying of the duly certified copies of the translated version of the complaint, said to have been made before the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh. Further, only xerox copies of the newspaper report had been produced at the time of the filing of the election petition.

54. The learned counsel appearing for the first respondent had also placed before this Court the following decisions in support of his contentions :

54.1. In Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar (2009) 9 SCC. 310, the Supreme Court had held as follows :

"47. The question of material facts in the election petition was comprehensively dealt with by this Court in Azhar Hussain case Vs. Rajiv Gandhi (1986) Supp. SCC 315). The Court observed that it is not disputed that the Code of Civil Procedure applies to the trial of an election petition by virtue of Section 87 of the Representation of the People Act, 1951, Section 87(1) and Section 87(2) of the Act apply to the election petition.

48. Section 87(1) of the Act reads as under :

"87. Procedure before the High Court. (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits :

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings."

49. In this view of the matter, the court trying the election petition can act in exercise of the powers of the Code including order 6 rule 16 and 7 Rule 11 (a) of the code. These provisions are set out as under :

"16. Striking out pleadings. The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading.

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the court.

11. Rejection of plaint, The plaint shall be rejected in the following cases :

- (a) where it does not disclose a cause of action."

50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with :

51. This Court in Samant N. Balkrishna Vs. George Fernandes (1969) 3 SCC. 238) has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh V. Madhav Rao Scindia (1977) 1 SCC 511) the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fall.

55. In Harkirat Singh V. Amrinder Singh (2005) 13 SCC 511 this Court again reiterated the distinction between “material facts” and “material particulars” and observed as under : (SCC p. 527, paras 51-52).

“51. A distinction between ‘material facts’ and ‘particulars’, however, must not be overlooked. ‘Material facts’ are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence, ‘Particulars’, on the other hand, are details in support of material facts pleaded by the party. The amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. ‘Particulars’ thus ensure conduct of fair trial and would not take the opposite party by surprise.

52. All ‘material facts’ must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with in the absence of pleading a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.”

57. It is settled legal position that all “material facts” must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of “material facts” on which the petitioner relies.

60. According to the appellant, in the election petition, there was no averment whether the bore wells were dug with the consent and/or active knowledge of the appellant. This averment was absolutely imperative and the failure to mention such an important averment in the petition is fatal for the election petitioner (the respondent herein) and the election petition is liable to be summarily dismissed on that ground.

61. The legal position has been crystallised by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are “material facts” which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.”

54.2. In Ram Sukh Vs. Dinesh Aggarwal [(2009) 10 SCC 541], the Supreme Court had held as follows :

“8. Before examining the merits of the issues raised on behalf of the election petitioner with reference to the relevant statutory provisions, it would be appropriate to bear in mind the observations of this Court in Jagan Nath V. Jaswant Singh (AIR 1954 SC 210). Speaking for the Constitution Bench, Mehr Chand Mahajan, C. J., had said that the statutory requirement of election law must be strictly observed and that the election contest is not an action at law or a suit in equity, but purely a statutory proceeding unknown to the common law and that the Court possesses no common

law power. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. Nevertheless, it is also to be borne in mind that one of the essentials of the election law is to safeguard the purity of the election process and, therefore, the courts must zealously ensure that people do not get elected by flagrant breaches of that law or by indulging in corrupt practices, as enumerated in the Act.

9. In this backdrop, we may now turn to the procedural provisions in the Act insofar as they are relevant for our purpose :

“81. Presentation of petitions. (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidates at the election and the dates of their election are different, the later of those two dates.

Explanation : In this sub-section, ‘elector’ means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

83. Contents of petition : (1) An election petition

- (a) shall contain a concise statement of the material facts on which the petitioner relies ;
- (b) shall set forth fully particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings :

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed

form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

86. Trial of election petitions. (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 of Section 82 or Section 117.

Explanation : An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) or Section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of Section 80-A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation : For the purposes of this sub-section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

- (7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.
- (8) Procedure before the High Court : (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits :

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

- (2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.”

From the aforesaid provisions, it would appear that Section 81 enables a petitioner to call in question any election on one or more of the grounds specified in sub section (1) of Section 100 of the Act.

- 14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in Samant N. Balkrishna V. George Fernandes [(1969) 3 SCC 238], Speaking for the three-Judge Bench, M. Hidayatullah, C. J., inter alia, laid down that :

- (i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;
- (ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;
- (iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;
- (iv) material facts and particulars are distinct matters material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and

- (v) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.
- 15. At this juncture, in order to appreciate the real object and purport of the phrase “material facts”, particularly with reference to election law, it would be appropriate to notice the distinction between the phrases “material facts” as appearing in clause (a) and “particulars” as appearing in clause (b) of sub-section (1) of Section 83. As stated above, “material facts” are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. “Particulars”, on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike “material facts” which provide the basic foundation on which the entire edifice of the election petition is built, “particulars” are to be stated to ensure that the opposite party is not taken by surprise.
- 16. The distinction between “material facts” and “particulars” and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam V. Satpal Singh [(2007) 3 SCC 617] wherein C. K. Thakker, J., stated thus : (SCC pp. 631-32, para 50).
- “50. There is distinction between facts probanda (the facts required to be proved i.e. material facts) and facts probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facts probanda and not facts probantia. The material facts on which the party relies for his claim are called facts probanda and they must be stated in the pleadings. But the facts or facts by means of which facts probanda (material facts) are proved and which are in the nature of facts probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.”
- 21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1) (a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below :
- “100. Grounds for declaring election to be void. (1) Subject to the provisions of sub-section (2) if the High Court is of opinion.

- (d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected.
- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.”

It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.

24. It needs little reiteration that for the purpose of Section 100(1)(d)(iv), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition.”

55. Mr. G. Rajagopalan, the learned senior counsel appearing for M/s. G. R. Associates, appearing for the second respondent, had submitted that the second respondent is not a necessary party to the election petition and therefore, he should be deleted from the proceedings, Section 82-A of the Representation of the People Act, 1951, provides as to who should be made as a respondent in the election petition.

56. In support of the above said contention, he had relied on the decision of the Supreme Court, reported in *Yadiyurappa Vs. Mahalingappa and another* (AIR 2001 SC 4041) wherein, it had been held as follows :

“8. It is therefore, clear, on the authorities of this Court, that those who are mentioned in Section 82 of the said Act must be made parties to an election petition and, if they are not, the election petition is one which does not comply with the provisions of Section 82 and must, therefore, be dismissed by reason of the term of Section 86 (1), it does not, however, follow that if to an election petition parties other than those who are necessary parties under Section 82 have been impleaded, the election petition is one that does not comply with the provisions of Section 82 and must be dismissed. Such a petition can be amended by striking out from the array of parties those additionally impleaded.”

57. It has also been stated that the filing of the affidavit alone, by a candidate, is mandatory. However, the correctness of the statement made in the affidavit is not relevant for the purpose of scrutinising the nomination, as held by the Supreme Court, in *Peoples Union for Civil Liberties (PUCL) Vs. Union of India* (AIR 2003 SC 2363).

58. It has also been submitted that, during the general elections, held in the year, 2009, the scrutiny of the nomination papers filed by 33 candidates was done, on 25-4-2009, and it was attended by the candidates and their election agents. The petitioner was an election agent of the Bharatiya Janata Party’s candidate. Though he was present at the time of the scrutiny, he did not raise any objection. In such circumstances, it has been prayed that it is just and necessary that this Court may be pleased to dismiss the election petition, insofar as the second respondent is concerned.

59. In view of the averments made in the affidavit filed in support of the election petition and in the counter affidavit filed on behalf of the first respondent, and in view of the submissions made by the learned counsels appearing for the petitioner, as well as the respondents, this Court finds that the election petition filed by the petitioner, under Section 80-A and 81, read with Section 33-A of the Representation of the People Act, 1951, is not maintainable.

60. The main contention raised by the petitioner is that, even though the first respondent had sworn to an affidavit, filed along with his nomination paper, on 20-4-2009, he had suppressed certain material facts relating to a criminal complaint filed against him before the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, registered as criminal case No. 385 of 2009, under Sections 499 and 500 of the Indian Penal Code, 1860. Non-disclosure of the said fact, which is a mandatory requirement, as per Section 33-A (1)(i) of the Representation of the People Act, 1951, would render the election of the first respondent, as a member of the 13th Lok Sabha, representing the Puducherry Parliamentary Constituency, as null and void.

61. It is also the contention of the petitioner that the first respondent had sworn to an affidavit by falsely, stating that no criminal case was pending against him on the date of the filing of the said affidavit. The petitioner has alleged that a complaint had been filed against the first respondent, before the Judicial Magistrate, First Class Raipur, State of Chhattisgarh, under Sections 499 and 500 of the Indian Penal Code, 1860 and the information about the said matter had been published, from Raipur Nagpur and Jabalpur, in the English newspaper, “The Hitavada”. However, the first respondent had not disclosed such information in his affidavit filed, on 20-4-2009, before the second respondent, in spite of his having knowledge about the said complaint, as seen from his reply published in the

said newspaper. Even though such a contention had been raised by the petitioner, he has not been in a position to show that the first respondent had official information about the criminal complaint said to have been filed against him, before the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, under Sections 499 and 500 of the Indian Penal Code, 1860. Further, the petitioner has not been in a position to show that the non disclosure of such information, as per Section 33-A of the Representation of the People Act, 1951, would be a sufficient ground for declaring the election of the first respondent, as null and void.

62. No material facts or material particulars have been furnished by the petitioner, in the election petition, to support and sustain his allegation that the first respondent had suppressed material information known to him, authentically, which he was required to disclose in his affidavit filed along with his nomination paper, as per Section 33-A (1)(i) of the Representation of the People Act, 1951.

63. Further, from the materials placed before this Court, it cannot be said that the first respondent had wilfully suppressed certain material facts and particulars, which would have, substantially, affected the outcome of the Puducherry Parliamentary Election, held in the year, 2009. The petitioner has not given the necessary particulars to substantiate his claim that the non-disclosure of the information, by the first respondent, as alleged by the petitioner, had substantially, affected the final outcome of the election.

64. Further, from the reading of Section 33-A(1)(i) of the Representation of the People Act, 1951, it is clear that it is mandatory for a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which the charge has been framed by the court of competent jurisdiction. From the said Section, it is also clear that the candidate would be required to furnish such information only if the offence is punishable with imprisonment “for two years or more”, in a pending case, in which a charge has been framed by the Court of competent jurisdiction. However, from the facts of the present case, it is clear that a complaint is said to have been made against the first respondent before the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, under Sections 499 and 500 of the Indian Penal Code, 1860. The punishment for defamation, prescribed under Section 500 of the Indian Penal Code, 1860, is simple imprisonment for a term which may extend to two years or with fine or with both. As such, it cannot be said that the alleged non-disclosure of material facts, by the first respondent, even if it is true, would fall under Section 33(A)(1)(i) of the Representation of the People Act, 1951, which talks about the information relating to offence punishable with imprisonment of two years or more.

65. According to Section 81 of the Representation of the People Act, 1951, the election petition calling in question any election may be presented on one or more of the grounds specified in sub-section 1 of Sections 100 and 101 of the said Act, to the High Court, by any candidate at such election or any elector, within the time limit specified therein. Therefore, the non-disclosure of the information regarding the complaint, said to have been filed against the first respondent, under Section 499 of the India Penal Code, 1860, for defamation, would not be a ground to declare the election of the first respondent, as null and void.

66. There is nothing on record to show that the first respondent had official knowledge of the complaint, said to have been made against him before the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh. Since, it has not been shown that summons had been served on the first respondent, in respect of the said complaint, the newspaper reports will not, by themselves, be sufficient to impute knowledge of the complaint on the first respondent. While so, it cannot be said that the first respondent had, willfully and fraudulently suppressed certain material facts regarding the complaint, in his affidavit, filed along with the nomination paper, before the second respondent, on 20-4-2009. Further, only xerox copies of the newspaper reports had been filed before this Court. In the absence of material facts and material particulars to support the allegation that the first respondent had wilfully suppressed material information in the sworn affidavit filed by the first respondent, before the second respondent, on 20-4-2009, it cannot be held that the first respondent had incurred a disqualification, as per Section 33-A of the Representation of the People Act, 1951, as alleged by the petitioner, in the election petition.

67. It has also been stated that the election petition has not been filed, under Section 100 of the Representation of the People Act, 1951. Even if it is found that the first respondent had not disclosed certain facts relating to the complaint, allegedly made against the first respondent, under Section 499 of the Indian Penal Code, 1860, it cannot be brought, under Section 33-A(1)(i) of the Representation of the People Act, 1951, since, the punishment provided under Section 500 of the Indian Penal Code, 1860, for defamation, would not amount to punishment, which would attract imprisonment of two years or more. Non disclosure of such information may be a cause of action for initiating proceedings against the concerned candidate, only under Section, 125-A of the Representation of the People Act, 1951. Realising the said position, the petitioner, in the election petition, seems to have filed the criminal complaint, dated 15-4-2010, on the file of the Chief Judicial Magistrate, Puducherry, under Section 200 of the Criminal Procedure Code, 1973, read with Section 125-A of the Representation of the People Act, 1951, and under Section 177 of the Indian Penal Code, 1860.

68. It has also been noted that the Chief Judicial Magistrate, Puducherry, had dismissed the said private criminal complaint stating that no *prima facie* case had been made out for taking cognisance of the case. Therefore, he had rejected the said complaint, in *limine*. The said fact has not been disputed by the learned counsel appearing for the petitioner.

69. It is also seen that the petitioner in the election petition had failed to state the various material facts and particulars in support of his allegations, like the date on which the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, had taken cognisance of the complaint, the date on which the charge had been framed and the summons had been issued against the first respondent, the date, time and place and the manner in which the election petitioner had informed the second respondent/Returning Officer about the alleged criminal complaint, said to be pending against the first respondent, and sufficient proof for imputing knowledge on the first respondent, regarding the complaint said to have been made against him before the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh.

70. There is nothing on record to show that the petitioner had objected to the acceptance of the first respondent's nomination paper, during the scrutiny of the nomination paper, by the second respondent. As such, the statement made on behalf of the petitioner, that a formal objection had been raised, at the time of the scrutiny, before the second respondent, regarding the non-disclosure of material information relating to the criminal complaint said to have been made against the first respondent, cannot be accepted.

71. The petitioner had not pleaded that summons had been issued to the first respondent and that he had received it before the filing of the sworn affidavit before the second respondent, on 20-4-2009. Further, it is noted

that the petitioner has not complied with the requirements of Section 81(3) of the Representation of the People Act, 1951, by filing the necessary number of copies, of the election petition, duly attested by the petitioner, as true copies of the petition. Certain other discrepancies have also been noticed, including the dates of verification and the filing of the election petition, as pointed out by the learned counsel appearing for the first respondent.

72. At this juncture, this Court is conscious of the fact that in a true democracy, the free will of the people would have to prevail, unless it is perceptibly irregular or palpably illegal. The democratic process of elections cannot be permitted to be curbed or scuttled, except in accordance with the procedure established by law. While construing the laws relating to the elections, in their strict sense, as intended by the legislature, it is to be kept in mind that the rule is participation in the democratic process and exclusion should only be an exception.

73. In such circumstances, this Court is of the considered view that sufficient cause and acceptable reasons have been shown by the first respondent for the rejection of the present election petition. As such, the election petition is liable to be dismissed, in *limine*, for want of proper pleadings and for lack of cause of action and triable issues. Hence, the election petition stands dismissed. No costs. Consequently, connected Applications Nos. 1049, 1050 and 1051 of 2010 are closed.

Sd/- M.J.J.

13-8-2010

[No. 82/PUDU-HP(8/2009)/2010]

By Order,

R. K. SRIVASTAVA, Secy.